IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Revision No.1249 of 2004

Date of Decision: March 14, 2007

Varinder Singh

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.A.P.S.Deol, Advocate,
for the petitioner.

Mr.M.C.Berry, Senior DAG, Punjab,
for the State.

Mr.M.S.Rakkar, Senior Advocate with
Mr.P.S.Baath, Advocate,
for the complainant.

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The petitioner was tried for an offence under Sections 326/324/34 IPC and sentenced to suffer RI for two years and to pay a fine of Rs.1000/- upon his conviction for an offence under Section 326 IPC. He was directed to undergo three months RI in default of payment of fine. In addition, he was also

to undergo one year RI with fine of Rs.500/- and two months in default of payment of fine for an offence under Section 324 IPC. Both the sentences were ordered to run concurrently. In an appeal filed by him, the sentence awarded to the petitioner was reduced to 1-1/2 years, but his conviction was maintained. He accordingly has filed this revision petition.

The petitioner was directed to be released on bail, while issuing notice in the petition. During the course of arguments, the attention of the counsel for the petitioner was drawn to the contention raised on behalf of the petitioner and noticed by this court in its order dated 11.6.2004 that while seeking leniency, it was pleaded that the injury caused by the petitioner, covered under Section 326 IPC, was on non-vital part of the body, i.e., little finger of right hand. It was accordingly pleaded that the petitioner should have been given benefit of probation. If the conviction of the petitioner was to be maintained under Section 326 IPC, his prayer for probation obviously cannot be entertained. Though the counsel for the petitioner made an attempt to say that evidence would not justify the conviction of the petitioner under Section 326 IPC, but the same cannot be accepted in view of the reliable and cogent evidence brought on record by the prosecution. Faced with this situation, the counsel for the petitioner did not pursue his submissions on merits of the case and pleaded for leniency. The counsel pointed out that injury attributed to the petitioner leading to an offence under Section 326 IPC was a fracture of little finger and as such was on a non-vital part. Mr.M.S.Rakkar, the learned Senior counsel for the complainant, however, made an attempt to counter this submission by saying that the injured has

suffered a permanent disability and has become handicapped because of the injury sustained by him. The counsel could not point out anything from the record, which is indicative of the fact that the injured has suffered some permanent disability or handicap.

The sentence awarded to the petitioner in this case is 1-1/2 years. The counsel for the petitioner has also pointed out that petitioner is an Advocate and otherwise has also suffered enough. On the other hand, Mr.Rakkar has referred to a decision of Surjit Singh Vs. Nahara Ram and anr., 2004(3) RCR (Criminal) 971 to say that un-due sympathy is not to be shown to the accused. This is a case where accused was convicted and sentenced to five years RI for an offence under Section 325 IPC. The High Court had reduced the sentence to a period already undergone, which was 63 days. While setting-aside the order of the High Court, the sentence in this case was fixed at 18 months. It is true that while sentencing a person in a criminal case, un-due sympathy should not be shown. Each case is to be seen on its own facts.

In this case, the incident took place on 14.8.1986. The petitioner was convicted and sentenced by the Magistrate on 24.2.2001. His appeal was decided on 11.5.2004 and since then the present revision is pending before this court. Is the appellant required to be incarcerated for something which happened in the year 1986?. Has not he suffered enough agony facing prosecution, awaiting trial and then the sentence staring at him for all these years?. It could not be seriously disputed before me that the injury suffered by the victim was a swelling on the dorsum of right hand on its medial. It cannot be said that such an injury could have left any

permanent disability. This court in number of cases has relieved individuals from the rigor of sentence only due to delay in conclusion of criminal proceedings. The courts are not required to prescribe sentence merely conditioned by the offence and to forget that it is dealing with human delinquent. Human Criteria can not be ignored while considering the critical question of punishment and gravity of the crime allowed to have undue hold on the sentencing court. It is said that crime is like a disease and correction not cruelty has the dominance in sentencing calculus. Any incarceration may lead to degeneration which is not the aim of criminal justice. The case may call for some compassion.

In Rishi Kumar Vs. State of Haryana, 2000(2) RCR (Criminal) 670, this court, while upholding the judgment of the Appellate Court in setting-aside the conviction, went on to hold that a person could not be allowed to suffer for the faults of the court for pendency of the case where one faces prolonged trial and remand of the case due to pendency of a prolonged trial was not considered justified.

Accordingly, the sentence awarded to the petitioner shall stand reduced to the period already undergone by him. The appeal shall stand disposed of in the above-noted terms.

March 14, 2007 (RANJIT SINGH)
ramesh JUDGE